

## **REMARKS/ARGUMENTS**

Claims 1, 3-6, 12, 14-16 and 23-25 are now pending in the present application. Claims 1, 3, 12 and 14 have been amended, and Claims 23-25 have been added, herewith. Reconsideration of the claims is respectfully requested.

### **I. Claim Objections**

Claims 3 and 14 are objected to under 37 CFR 1.75(c) as being improper dependent form for failing to further limit the subject matter of a previous claim. Applicant has amended such claims herewith to eliminate the objectionable language.

Therefore, the objection to Claims 3 and 14 have been overcome.

### **II. 35 U.S.C. § 112, Second Paragraph**

Claims 1 and 12 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter, which applicant regards as the invention. This rejection is respectfully traversed.

In rejecting Claims 1 and 12, the Examiner asserts that if the prior art structure, in this case a file, is capable of performing the intended use, used for a calendar program, then it *meets the claim*. Applicant believes this comment is more appropriate in the rationale given in making an obviousness rejection, and not a vagueness rejection. The fact that prior art is alleged to ‘meet the claim’ does not directly correlate to the claim itself being indefinite, but that the prior art allegedly teaches the claimed feature. Applicant has in any event amended such claims in order to move the prosecution forward and expeditiously place these claims in condition for allowance.

Therefore the rejection of Claims 1 and 12 under 35 U.S.C. § 112, second paragraph has been overcome.

### **III. 35 U.S.C. § 103, Obviousness**

Claims 1, 3-6, 12 and 14-16 stand rejected under 35 U.S.C. § 103 as being unpatentable over Bharati (Meditation and Self-Awareness CDs, <http://swamij.com/cdtimer.htm>) retrieved from <http://web.archive.org/> as it appeared on October 22, 2002, hereinafter “Bharati” in view of James (U.S. Patent No. 6,910,038 B1), hereinafter “James”, McMahon et al. (U.S. Publication No. 2004/0019396 A1), hereinafter “McMahon”, and the definition of a calendar provided by Merriam-Webster’s collegiate dictionary, hereinafter “Merriam-Webster”. This rejection is respectfully traversed.

In the Examiner's rescinding of allowable subject matter, the Examiner states "Merriam-Webster provides the definition that a calendar is nothing more than an orderly list". Applicant is not claiming a mere 'calendar', but instead are claiming a calendar program. Claim 1 has been amended to give further meaning to such calendar program and how it is not merely a list, as appears to be the Examiner's position in rejecting Claim 1. As amended, Claim 1 recites "receiving an identification of the session and a duration of the session from a data structure containing a schedule of a date and time for each of a plurality of user sessions, wherein the data structure is a file for a calendar program that is installed on the data processing system and operable for calendaring the plurality of user sessions" and "wherein a plurality of audio files are created on the storage medium in which each audio file corresponds to a given user session for a particular user according to the schedule of the plurality of user sessions".

None of the cited references teach or suggest such a schedule of a plurality of user sessions, and thus it is urged that this amendment to the claims has overcome the present rejection. For example, the James 'data structures' are alleged to be equivalent to the claimed 'schedule' (see, e.g., page 5 of the current Office Action dated March 6, 2008). It is urged that the James data structures are pointers to the actual data files that are to be written to the disc (James col. 7, lines 26-36), and such data structures do not teach or otherwise suggest "receiving an identification of a session and a duration of the session from a data structure containing a schedule of a date and time for each of a plurality of user sessions", as expressly recited in amended Claim 1. The McMahon schedule/playlist is similarly directed to actual data files burned on the disc (McMahon page 1, paragraphs [0009] – [0011]). It is thus urged that the amendment to Claim 1 has overcome the present rejection of such claim - and such claim advantageously facilitates generation of customized storage medium with a plurality of audio files based on a plurality of user sessions as per a calendar program's date/time schedule.

Applicant further urges that a person of ordinary skill in the art would not have been motivated to further modify the teachings of Bharati with the teachings of the other cited references, as Bharati describes an 'order-by-mail' CD that is prerecorded with time information, and thus there would be no need to somehow modify such teachings to include techniques for data recording as the Bharati CDs have already been recorded – and thus such awkward modification would merely add duplication of functionality with no associated benefit, evidencing no motivation to modify the teachings of Bharati with the teachings of the other cited references. Thus, the only motivation for making such modification must be coming from Applicant's own disclosure – which is impermissible hindsight analysis.<sup>1</sup>

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<sup>1</sup> It is error to reconstruct the patentee's claimed invention from the prior art by using the patentee's claims as a "blueprint". When prior art references require selective combination to render obvious a subsequent invention, there must be some reason for the combination other than the hindsight obtained from the invention itself. *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 227 USPQ 543 (Fed. Cir. 1985).

Applicant initially traverses the rejection of Claims 3-6 for reasons to those given above with respect to Claim 1 (of which Claims 3-6 depend upon).

Applicant further traverses the rejection of Claim 3 in that such claim has been amended in accordance with the Specification description at page 13, lower portion of the page. It is urged that none of the cited references teach or suggestion such sending of session identification and duration to another data processing system, which advantageously allows a user to identify a particular disc for a particular session without having to physically manipulate the data processing system at which the storage media was created.

Applicant initially traverses the rejection of Claims 12 and 14-16 for similar reasons to those given above with respect to Claim 1.

Applicant further traverses the rejection of Claim 14 for similar reasons to the further reasons given above with respect to Claim 3.

Therefore, the rejection of Claims 1, 3-6, 12 and 14-16 under 35 U.S.C. § 103 has been overcome.

**IV. Newly Added Claims**

Claims 23-25 have been added herewith. Examination of such claims is respectfully requested.

**V. Conclusion**

It is respectfully urged that the subject application is patentable over the cited references and is now in condition for allowance. The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

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Respectfully submitted,

/Wayne P. Bailey/

Wayne P. Bailey  
Reg. No. 34,289  
Yee & Associates, P.C.  
P.O. Box 802333  
Dallas, TX 75380  
(972) 385-8777  
Attorney for Applicant